IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 412

HAROLD KRAMER,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

JURISDICTIONAL STATEMENT.

The jurisdiction of this court is invoked under Title 28 U. S. C., Section 344 (b), Section 237-(b), of the Judicial Code as amended by the Act of February 13, 1925, and March 8, 1939.

The statute of the State of Ohio that is involved is found in Volume 119 Ohio Laws, page 97. This statute defines what is the practice of dentistry.

Prior to May, 1941, the practice of dentistry was defined as follows:

> Section 1329. "Any person shall be regarded as practicing dentistry within the meaning of this act, who is a manager, proprietor, operator or conductor of a place for performing dental operations or who, for a fee, salary or other reward paid or to be paid either

to himself or to another person, performs, or advertises to perform, dental operations of any kind, or who diagnoses or treats diseases or lesions of human teeth or jaws, or attempts to correct malpositions thereof, or who takes impressions of the human teeth or jaws, or who uses the words 'dentist', 'dental surgeon', the letters 'D.D.S.' or other letters or title in connection with his name, which in any way represent him as being engaged in the practice of dentistry."

On May 22, 1941, the above section was amended by adding the following language:

"Or who shall construct, supply, reproduce or repair any prosthetic denture, bridge, artificial restoration, appliance or other structure to be used or worn as a substitute for natural teeth, except upon the order or prescription of a licensed dentist and constructed upon or by the use of casts or models made from an impression taken by a licensed dentist, or who shall advertise, offer, sell or deliver any such substitute or the services rendered in the construction, reproduction, supply or repair thereof to any person other than a licensed dentist, or who places or adjusts such substitute in the oral cavity of another * * *".

This amendment became effective August 21, 1941.

The petitioner was charged in the Court of a Justice of the Peace of Cuyahoga County with the violation of that part of the statute which was amended May 22, 1941, in this; that he repaired a certain false plate of Ann Wallace without having received a prescription from a licensed dentist and with advertising the repair of dental plates, and that such advertisements were directed to others than licensed dentists. He was convicted on May 28, 1942, and fined Two Hundred Dollars.

Error was prosecuted to the Common Pleas Court of Cuyahoga County, which court affirmed the judgment of

the Justice Court without opinion. Appeal was taken to the Fifth District Court of Appeals of Ohio, which court also affirmed the judgment without opinion. Appeal was then had to the Supreme Court of the State of Ohio upon a Motion to certify the record and an appeal taken as of right. Motion to certify the record was overruled July 8, 1943. Appeal filed as of right was dismissed on the Motion of the State of Ohio July 8, 1943. Rehearing thereon was denied July 14, 1943.

The question involved is whether or not the amendment to Section 1329, as above set forth, is in violation of the defendant's rights under the following sections of the Constitution of the State of Ohio:

Article I—Bill of Rights—Sec. 1:

> "All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."

Article I—Section 14:

> "The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and things to be seized."

Article I—Section 19:

> "Private property shall ever be held inviolate but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads which shall be open to the public, without charge, a compensation shall be made to the owner, in money: and in all other cases, where private prop-

> erty shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner."

and whether said law was and is unconstitutional and in violation of the defendant's rights under the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The question was raised in the first instance by Demurrer to the Affidavit, by objection to the introduction of evidence, by Motion to direct a verdict at the conclusion of the State's case, by Motion to direct a verdict at the conclusion of all the evidence, by Motion for judgment notwithstanding the verdict and by Motion for a new trial.

The Assignments of Error raised in all courts were as follows:

> (1) That the Court of the Justice of the Peace erred in overruling the Demurrer of the petitioner;
>
> (2) That the Court erred in overruling the objection of the petitioner to the introduction of evidence;
>
> (3) That the Court erred in overruling the petitioner's Motion for judgment;
>
> (4) That the Court erred in failing to declare Section 1329 of the Ohio General Code as amended May 22, 1941, regulating the practice of dentistry, unconstitutional and in violation of the defendant appellant's rights under the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Constitution and in violation of the defendant's rights under Sections 1, 14 and 19 of Article I of the Constitution of the State of Ohio.

The question involved is substantial because the amendment under which the petitioner was convicted is claimed by the petitioner is not established in the law for the pur-

pose of protecting the health, morals and general welfare of the people, but has for its purpose the creation of a monopoly and the complete control by licensed dentists of the prices that the public must pay for work that is performed not by dentists but almost exclusively by tradesmen and manufacturers. The amendment places the general public at the mercy of the licensed dentists not for what the public pays for professional service and advice, but for what they pay for work that is entirely mechanical and in most instances performed outside the licensed dentists's office.

Following is references to places in the record where the questions involved appear:

Affidavit	Page 5
Demurrer	Page 10-13
Notice of Appeal	Page 16
Motion for New Trial	Pages 19 & 20
Error to the Justice of Peace of Warrensville Township	Pages 21-22
Notice of Appeal	Page 23
Assignment of Error in the Court of Appeals	Page 25
Defendant's Bill of Exceptions	Page 30-123
Notice of Appeal to the Supreme Court of the State of Ohio	Page 124
Motion to Certify	Pages 125, 126
Motion to Dismiss Appeal	Pages 127-128
Application for Rehearing	Pages 130, 131

Respectfully submitted,

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